

REMARKS

Applicants respectfully traverse the objection of claims 24-42 as directed to an invention that is independent or distinct from the invention originally claimed in cancelled claims 1-23. None of pending claims 24-42 recite any matter not already subsumed by original claims 1-23. Therefore, pending claims 24-42 do not recite an invention distinct or independent from the invention originally recited by claims 1-23.

Pending claims 24-42 recite, *inter alia*, a method or a device comprising a cover member defining a cavity with an attaching surface and an electrode coupled to the surface. Original claims 1-23 recite, *inter alia*, a method or a device comprising a baffle and a cover member that form a cavity, while original claims 8, 10, and 11 recite an electrode attached to the cavity formation. Therefore, new claims 24-42 are derived from a combination of original independent base claim 1 and original dependent claims 8, 10, and 11. Hence, new claims 24-42 are not independent or distinct from the invention originally recited in claims 1-23 because the elements are drawn from a combination of existing claims that have already been considered by the Examiner.

Moreover, MPEP § 803 states that while examiners need not cite documents to support the restriction requirement in most cases, examiners must provide reasons and/or examples to support conclusions. Applicants note that examiner has not provided any reasons or support for the objection.

Furthermore, a proper restriction between patentably distinct inventions requires not only that the inventions are independent or distinct as claimed, but also requires a showing that there exist a serious burden on the examiner. MPEP § 803. Original claims 1-23 recite an additional secondary cavity structure coupled to the first cavity while the presently pending claims recite only a single cavity. A prior art search would have uncovered both

single cavity and multi cavity prior art because both types are of the same species. It follows that the search conducted by the Examiner would have encompassed the matter now recited in pending claims 24-42 and hence, there is no burden on the examiner sufficient to justify the restriction.

CONCLUSION

For at least the reasons set forth above, Applicants respectfully request allowance of claims 24-42.

Although Applicants believe that no other fees are due, the Commissioner is hereby authorized to charge any fees or to credit any overpayments to Deposit Account No. 13-2855 of Marshall, Gerstein & Borun LLP. In addition, if a petition for an extension of time under 37 CFR 1.136(a) is necessary to maintain the pendency of this case and is not otherwise requested in this case, Applicants request that the Commissioner consider this paper to be a request for an appropriate extension of time and hereby authorize the Commissioner to charge the fee as set forth in 37 CFR 1.17(a) corresponding to the needed extension of time to Deposit Account No. No. 13-2855 of Marshall, Gerstein & Borun LLP.

If there are matters that can be discussed by telephone to further the prosecution of this application, Applicants respectfully request that the Examiner call its attorney at the number listed below.

Respectfully submitted,

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